

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.1076 OF 2007
ALONG WITH
CIVIL APPLICATION NO.1077 OF 2007

Bobby Suresh Shah	 Appellant / Applicant
V/s.	
Shehnaz Sani & Ors.	 Respondents

Mr. Bobby S. Shah, the Appellant-Applicant, is present-in-person.

Mr. R.M. Upadhyay for Respondent No.1.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

DATE : 22ND SEPTEMBER 2016.

P.C. :

1. Heard the appellant-applicant, who is present-in-person. He has also filed an affidavit-in-response. Perused the same. Heard learned counsel for respondent No.1.

2. Learned counsel for respondent No.1 produces before this Court a copy of the order passed by the Supreme Court on December 13, 2007 in Civil Appeal No.5932 of 2007, (arising out of S.L.P. (C) No.12293 of 2007). The said appeal appears to have been preferred against the order passed by this Court on 16th June 2007.

3. As per the order passed by the Hon'ble Supreme Court, the short question, which arises for determination, in this case is, '*whether the Memorandum of Understanding constitutes Partnership Deed?*' According to the Supreme Court, the said question is a mixed question of fact and law and should not have been disposed of finally by this Court in a Notice of Motion. The Supreme Court, therefore, was of the view that, it will be open to all the parties to raise all issues and contentions in the suit, including objection with regard to maintainability of the suit, being barred under Section 69 of the Partnership Act, undervaluation of the suit etc. Accordingly, the Supreme Court has directed both the parties to move the Trial Court for interim arrangement regarding business to be conducted and maintenance of accounts etc. during pendency of the suit. The Trial Court also gave liberty to respondent No.1 to move a fresh Notice of Motion for appropriate reliefs within a period of four weeks and to hear and dispose of the Notice of Motion within a period of three months.

4. It is submitted by learned counsel for respondent No.1 that, accordingly, the Notice of Motion was preferred and the said Notice of Motion No.45 of 2008 has been dismissed by the Trial Court vide its order dated 7th April 2008. Against that order, respondent No.1 has preferred Appeal No.1201 of 2010, which also came to be dismissed for default on 7th June 2010.

5. It is submitted by learned counsel for respondent No.1 that, due to pendency of this First Appeal, the Trial Court has not yet proceeded with the hearing of the Suit. This fact is admitted by the appellant also, who is appearing in person.

6. In view of this subsequent development, that had taken place, this First Appeal itself has become infructuous and in view of the order of the Supreme Court, hearing of the Suit needs to be proceeded further.

7. As can be seen from the order of the Supreme Court dated 13th December 2007, as all the issues and contentions to be raised in the Suit, including objection with regard to maintainability of the Suit, are kept open, it follows that the Trial Court will have to restore the Suit and to proceed with the hearing of that Suit.

8. The Trial Court has also, in its order dated 7th April 2008, held that, since this First Appeal is pending before this Court, unless and until the order of dismissing the Suit is set aside and the suit is ordered to be taken up on Board, the issues relating to maintainability of the Suit, in view of Section 69 of the Partnership Act, cannot be decided. Now, considering that the Hon'ble Supreme Court has asked the Trial Court to decide the

said issue, the Suit has to be restored to its original file, so that the Trial Court can decide all the issues and contentions raised therein.

9. Thus, this First Appeal having become infructuous, the same is disposed of by relegating both the parties to the Trial Court, and, in view of the order passed by the Supreme Court on 13th December 2007 in Civil Appeal No.5932 of 2007, the order of dismissal of the Suit is set aside and the Suit is restored to its original file.

10. Needless to state that, the Trial Court will expedite hearing of the Suit.

11. Both the parties are directed to appear before the Trial Court on 17th November 2016.

12. This First Appeal stands disposed of in the above terms.

13. In view of disposal of the First Appeal, Civil Application No.1077 of 2007 pending therein no more survives and the same is disposed of.

[DR. SHALINI PHANSALKAR-JOSHI, J.]